

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF STATE**

**PROCEDURES TO ASSURE COMPLIANCE WITH PROVISIONAL BALLOTING  
UNDER THE HELP AMERICA VOTE ACT OF 2002 AND THE PENNSYLVANIA  
ELECTION CODE-**

**§ 1. Provisional ballots generally.**

(a) *The Help America Vote Act of 2002.*

(1) Section 302(a) of the Help America Vote Act of 2002 (HAVA) provides that “[i]f an individual declares that [he or she] is a registered voter in the [county and election district] in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, [the] individual shall be permitted to cast a provisional....” 42 U.S.C. § 15482(a).

(2) In such circumstances, an election official at the polling place is required to notify the individual that he or she may cast a provisional ballot in the election; and the individual must be permitted to cast a provisional ballot at the polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is a registered voter in the election district and is eligible to vote in the election. 42 U.S.C. §§ 15482(a)(1) & (2).

(3) If it appears from the general register that the voter is registered to vote in another election district in the county, the district election board and/or a county elections official should direct the voter to the proper polling place, advise the elector that it is illegal under Pennsylvania law to vote in an election district in which he or she is not properly registered and eligible to vote, and inform the elector that his or her vote cast on a provisional ballot in an improper election district might not be counted by the county board of elections. *However, under section 302(a) of HAVA, an individual who declares in writing that he is registered and eligible to vote in the election at the election district at which he or she has appeared to vote must be accorded the opportunity to cast a provisional ballot.*

(b) *Name does not appear on general register.* If an individual claims to be properly registered and eligible to vote at the election district in which the individual has presented himself or herself to vote, but the name of the individual does not appear on the general register and the individual's registration cannot be determined by the inspectors of election or the county board of elections, the individual has the right, under section 302(a) of HAVA [42 U.S.C. §15482(a)] and section 1210(a.4)(1) of the Pennsylvania Election Code [25 P.S. § 3050(a.4)(1)], to cast a provisional ballot.

(c) *Absence of voter identification.*

(i) An individual who claims to be properly registered and eligible to vote at the election district in which the individual has presented himself or herself to vote, who is voting for the first time in the election district based on a voter registration application or voter registration address change that was approved by the voter registration commission, and who is not able to produce identification as required by sections 1210(a) and (a.1) of the Election Code [25 P.S. §§ 3050(a) & (a.1)]

has the right under the Pennsylvania Election Code to cast a provisional ballot. *See* 25 P.S. §§ 3050(a.2) & (a.4)(1)

(ii) An individual who claims to be properly registered and eligible to vote at the election district in which the individual seeks to vote and who is required by section 303(b) of HAVA [42 U.S.C. § 15483(b)] to present or submit identification before voting, but who has not done so, is entitled to cast a provisional ballot or to have his/her absentee ballot counted as a provisional ballot. *See* 42 U.S.C. § 15483(b)(2)(B). For provisions determining the individuals who register to vote by mail who are required by section 303(b) of HAVA to present or submit identification before voting in a Federal election for the first time in a county, *see* 42 U.S.C. §§ 15483(b)(1) & (3) and (d)(2).

(d) *Identity or qualifications challenged by judge of elections.* An individual who claims to be properly registered and eligible to vote at the election district in which the individual has presented himself or herself to vote, but whose identification or eligibility to vote is challenged by the judge of elections or other elections official, has the right to vote by provisional ballot. *See* 42 U.S.C. § 15482(a) and 25 P.S. § 3050(a.2).

(e) *Judicial orders.*

(i) An individual presenting a judicial order to vote shall be permitted to cast a provisional ballot. *See* 25 P.S. § 3050(a.4)(1). When an individual is seeking a judicial order to vote, the court of common pleas is required to inform the individual of the provisional ballot process set forth in section 1210(a.4) of the Election Code [25 P.S. § 3050(a.4)]. *See* 25 P.S. § 3046.

(ii) An individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for the closing of the polls by a State law that is in effect 10 days before the date of the election may vote in that election only by provisional ballot. Such provisional ballots must be separated and held apart from other provisional ballots cast by those not affected by the order extending the time for voting. *See* 42 U.S.C. § 15482(c).

**§ 2. Provisional balloting process.**

(a) *Notification.*

(1) If an individual appears to be eligible to cast a provisional ballot for one or more of the reasons described in § 1 (relating to provisional balloting generally), a district election official at the polling place must notify the individual that he or she may cast a provisional ballot in the election. *See* 42 U.S.C. § 15482(a)(1).

(2) Before providing an individual with the opportunity to cast a provisional ballot, the district election officials must determine that the individual has not cast an Absentee Ballot or Alternative Ballot in the election district. If the individual has cast an Absentee Ballot or Alternative Ballot and presents himself/herself to vote in person, the district election board must void the Absentee Ballot or Alternative Ballot in accordance with the procedures prescribed by the Election Code for voiding an absentee ballot before proceeding to allow the individual to cast a Provisional Ballot.

(b) *Affidavit of elector – On Official Provisional Ballot Envelope.*

(1) Before a provisional ballot is cast, the Election Code requires the elector to sign an affidavit (which appears on the front of the Official Provisional Ballot Envelope) stating the elector's name; his/her date of birth; the voter's residence

(including municipality and county) at the time of his/her registration; a statement that the provisional ballot is the only ballot that the voter has cast in the election; and the voter's current residence. The affidavit is also to be signed by the judge of elections and the minority inspector. *See* 25 P.S. § 3050(a.4)(2).

(2) The district election board may not issue a provisional ballot to an elector or accept a completed provisional ballot from an elector unless the elector has completed and signed the affidavit and the judge of elections and the minority inspector each have signed the affidavit as witnesses.

(3) The signature of the elector on the affidavit is mandatory. Therefore, the county board of elections should not accept as valid any provisional ballot that does not include the signed affidavit of the elector.

(4) An election official cannot deny an individual the right to vote because of an error or omission on any record or paper requisite to voting unless the error or omission is material in determining whether the individual is qualified under the law to vote in the election. *See* 42 U.S.C. § 1971(a)(2)(B). Therefore, the county board of elections may not reject a provisional ballot solely because the elector has not completed all of the information on the affidavit. The county board of elections should determine the validity of a provisional ballot that includes the elector's signed affidavit based upon the information provided and may reject the ballot for the omissions only if the omitted information is necessary to determine whether the provisional voter was eligible to vote in the election at the election district.

(5) The county board of elections should not reject a provisional ballot as invalid solely because the judge of elections or the minority inspector has not signed the affidavit. The board of elections should reject the provisional ballot for lack of the

district elections officials' signatures only if the board has good cause to believe that the provisional voter was not eligible to vote, or fraud has been committed, or other substantial irregularity has occurred with respect to the provisional ballot. In such circumstances, the board of elections should consider convening a hearing, with notice to the provisional voter, and requiring the district election board to appear before the county board of elections as part of the hearing to determine the validity of the provisional ballot.

(c) *Voting.* An individual issued a provisional ballot must be directed to an accessible area within the polling place where he/she may complete the provisional ballot in private. The voter must then place the ballot in the secrecy envelope provided to him, seal the secrecy envelope, and place the sealed secrecy envelope containing the provisional ballot within the provisional ballot envelope on which the voter has completed and signed the affidavit described in subsection (b) (relating to affidavit of elector).

(d) *Affirmation by elector – On Official Provisional Ballot Envelope.*

(1) No provisional ballot may be accepted by the district election officials or the county board of elections unless the individual who has cast the provisional ballot at the polling place has signed a written affirmation before an election official stating that the individual is a properly registered elector in the election district and that he/she is eligible to vote in that election and in the election district in which the individual has cast the provisional ballot. *See* 42 U.S.C. § 15482(a)(2).

(2) The written affirmation of the elector appears on the front of the Official Provisional Ballot Envelope. It should be signed by the provisional voter after he/she has cast the provisional ballot, sealed the provisional ballot in the secrecy

envelope, and placed the secrecy envelope into the provisional ballot envelope. *See* 25 P.S. § 3050(a.4)(3).

(3) The written affirmation of the provisional voter is mandatory under Federal and State law. *See* 42 U.S.C. § 15482(a)(2) & 25 P.S. §§ 3050(a.4)(1) & (3). Thus, if the elector fails to sign the affirmation, the provisional ballot is not valid and should not be counted.

(4) Because a provisional ballot contained within an unsigned provisional ballot envelope is not valid, the district elections officials should establish procedures to assure that a provisional voter has signed the required affirmation before the provisional voter has left the polling place.

(5) Upon receiving the signed and sealed provisional ballot envelope, the judge of election must affix the Ballot Identification Number to the Provisional Ballot Envelope and give the receipt with the corresponding number to the individual casting the provisional ballot. The judge of election must also inform the individual about how he/she can learn whether the Provisional Ballot was counted and, if not counted, the reason therefore. *See* 42 U.S.C. § 15482(a)(5); 25 P.S. § 3050(a.4)(8).

### **§ 3. Close of the polls.**

All provisional ballot envelopes must remain sealed and must be returned to the county board of elections after the close of the polls. *See* 42 U.S.C. § 15482(a)(3); 25 P.S. § 3050(a.4)(3).

### **§ 4. County Board of Elections.**

(a) *Notice.* Before the date of the election, the county board of elections should generally notify all interested parties and the public of the date, time and place at which the county board of elections will convene to canvass and count provisional ballots. The notice should be published by the county board of elections in at least one newspaper of general circulation within the county.

(b) *Timing.*

(1) The county board of elections is required by HAVA to determine promptly whether the individuals casting provisional ballots in the election were eligible under Pennsylvania law to vote in the election at the election district where the provisional vote was cast. *See* 42 U.S.C. §§ 15482(a)(3) & (4).

(2) Under the Election Code, the county board of elections shall, within seven calendar days of the election, “examine each provisional ballot envelope that is received to determine if the individual voting that ballot was entitled to vote at the election district in the election.” *See* 25 P.S. § 3050(a.4)(4).

(c) *Staff preparations.*

(1) The Department of State recommends that the staff of the county board of elections, as promptly as possible following the election, prepare the provisional ballots cast in the county for disposition by the county board of elections. In doing so, the Department of State recommends that the county board’s staff gather such information that it believes might be relevant for the board of elections to determine (i) whether the provisional voters were registered to vote as required by law; (ii) whether the provisional voters were entitled to vote in the election at the election district where they cast their provisional ballot or, if not, at another election district in the county; and (iii)

whether the voter's signatures on the provisional ballot appear to be the genuine signatures of the voter as recorded on the elector's registration form.

(2) The Department of State recommends that, based on its preparation for consideration of the provisional ballots by the county board of elections, the staff also be prepared to make recommendations to the county board of elections as to those provisional ballots that should be counted; those that should be rejected as ineligible or otherwise invalid and the reasons why; and those that should be partially counted as having been cast in the proper county but not in the proper election district.

(d) *Proceedings of the County Board of Elections.*

(1) The county board of elections should convene in a public meeting at the time and place previously announced to interested parties and the public for the purpose of examining the provisional ballot envelopes and determining the eligibility of those voters casting a provisional ballot to vote in the election in the election district.

(2) For each provisional ballot cast, the county board of elections should confirm with its staff that the electors who have cast a provisional ballot have not voted in some manner other than by the provisional ballot and that the provisional ballots of those who have cast another ballot have been set aside for rejection by the board of elections. Such ballots should be marked as "Rejected as Invalid."

(3) The county board of elections should confirm with its staff that each provisional ballot envelope is in proper order or that those provisional ballot envelopes containing one or more discrepancies have been set aside for special inquiry, investigation or other handling (including a hearing) as the board of elections might determine to be necessary to resolve the discrepancy and to determine the eligibility of the provisional voter to cast a vote in the election.

*Following is an illustration of a ballot that likely would require special handling:*

*An individual appears to vote at an election district for which the district register does not include the individual's name.*

*The district election board is able to determine that the individual's name does appear in the general register as a registered voter of a different election district in the county.*

*The individual has represented to the district election board a residence address that corresponds to the registered address – an address that does not lie within the election district at which the elector has presented himself to vote.*

*Despite the instructions of the elections officials that the voter is registered to vote and eligible to vote at an election district in the county other than the one where he has appeared to vote, and that he should travel to the polling place assigned for the proper election district to cast his vote, the elector refuses to travel to the proper polling place to vote and insists upon casting a provisional ballot at the election district in which it appears that the elector is not eligible to vote.*

*Suggested method of disposition:*

*Before determining the proper disposition of this provisional ballot, the county board of elections should determine whether the elector has chosen knowingly to cast a ballot in an improper election district in violation of the Election Code. If the board of elections determines that the elector has knowingly voted in an improper election district, the board of elections may declare the ballot to be invalid. However, absent a determination of willfulness by the elector, the board should dispose of the provisional ballot as a ballot cast in the proper county but at an improper election district and count the ballot as to those offices for which, and questions on which, the elector was qualified to vote.*

(4) After setting aside the provisional ballots that are invalid because the voter has already cast another ballot and those ballots that require special handling, the county board of elections should proceed to canvass the other provisional ballots by announcing the name of each provisional elector in turn and the reason for the provisional ballot having been cast, and proceeding as described in the following paragraphs of this subsection.

(5) The Department of State recommends that, in proceeding to canvass each provisional ballot, the county board of elections shall

organize the provisional ballots in several categories and address each category together as described in this subsection. The recommended categories and order of proceeding include:

(i) Those provisional voters who cast a provisional ballot for lack of required identification (needed for first time voters) and whom the board's staff advises appear eligible to vote in the election at the election district in which they voted and whose signatures appear to be genuine.

(ii) Those provisional voters who cast a provisional ballot because their names did not appear in the general register and whom the board's staff advises appear eligible to vote in the election at the election district in which they voted and whose signatures appear to be genuine.

(iii) Those provisional voters who cast a provisional ballot after presenting a judicial order to vote and whom the board's staff advises appear eligible to vote in the election at the election district in which they voted and whose signatures appear to be genuine.

(iv) Those provisional voters who cast a provisional ballot because the judge of elections at the polling place challenged the elector's identification or eligibility to vote and whom the board's staff advises appear eligible to vote in the election at the election district in which they voted and whose signatures appear to be genuine.

(v) Those provisional voters who cast a provisional ballot for lack of required identification and whom the board's staff advises appear eligible to vote in the election, but at an election district in the county different from the one in which they voted, and whose signatures appear to be genuine.

(vi) Those provisional voters who cast a provisional ballot because their names did not appear in the general register and whom the board's staff advises appear eligible to vote in the election, but at an election district in the county different from the one in which they voted, and whose signatures appear to be genuine.

(vi) Those provisional voters who cast a provisional ballot after presenting a judicial order to vote and whom the board's staff advises appear eligible to vote in the election, but at an election district in the county different from the one in which they voted, and whose signatures appear to be genuine.

(vii) Those provisional voters who cast a provisional ballot because the judge of elections challenged the elector's identification or eligibility to vote and whom the board's staff advises appear eligible to vote in the election, but at an election district in the county different from the one in which they voted, and whose signatures appear to be genuine.

(viii) Those provisional voters who cast a provisional ballot for any reason and whom the board's staff advises appear eligible to vote in the election in an election district in the county, but whose signatures appear not to be genuine.

(ix) Those provisional voters who cast a provisional ballot for any reason and whom the board's staff advises appear not to be properly registered to vote in the county or appear for any other reason not to have been eligible to vote in the election in the county.

(6) During all proceedings of the county board of elections, candidates, watchers and other candidate's representatives (including counsel), as well as members of the press and the public (including provisional voters), must be allowed to Observe the board's proceedings.

(7) The county board of elections must afford to candidates, watchers, candidate's representatives (including counsel) and political party representatives the opportunity to challenge any determination of the county board of elections with respect to the counting or partial counting of any provisional ballot.

(8) Upon challenge of any provisional ballot, the ballot envelope shall be marked "challenged" together with the reason for the challenge. The provisional ballot shall be set aside and shall be placed unopened in a secure, safe and sealed container in the custody of the county board of elections until it can fix a time and place for a formal hearing of all such challenges. The time for the hearing shall not be later than seven days after the date of the challenge. Notice must be given where possible to all provisional electors challenged and to every attorney, watcher, candidate, candidate representative or party representative who made the challenge.

(9) The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any petitioner aggrieved by the decision of the county board. The appeal must be taken within two days after the decision by the county board.

(10) Those provisional ballots that the board of elections is able to determine, without challenge or special inquiry, were cast by eligible voters should be opened and counted as provided by sections 1210(a.4), (5) & (7) of the Election Code [25 P.S. §§ 3050(a.4), (5) & (7)].

(11) At all times, the board of elections should be careful to preserve the provisional ballot envelopes, including the declarations of the voter and the signatures of the district election board.

(12) Before opening the secrecy envelopes containing the provisional ballots, the board of elections should commingle the accepted provisional ballots, in a manner consistent with the procedure outlined for the canvassing of absentee ballots under section 1308(e) of the Election Code [25 P.S. § 3146.8(e)].